

Appendix 1

Joint Stipulation to Modify Consent Decree

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

UNITED STATES OF AMERICA,
and NEW MEXICO OFFICE OF THE
NATURAL RESOURCES TRUSTEE,

Plaintiffs,

v.

Civil Action No. 95-0285 MV/LFG

BAYARD MINING CORP.,
MINING REMEDIAL RECOVERY
COMPANY, TCI PACIFIC
COMMUNICATIONS, INC, (formerly
known as Viacom International Inc.,)

and

CBS OPERATIONS INC. (originally
known as Viacom International
Services Inc.
(Joined Party)

Defendants.

JOINT STIPULATION TO MODIFY CONSENT DECREE

WHEREAS on June 12, 1995, this Court entered a Consent Decree in the above-captioned matter.

WHEREAS for the reasons described in the United States' Notice of Lodging of Proposed Consent Decree Modifications, the parties hereby stipulate to modify the Consent Decree in this matter, entered on June 12, 1995, as follows:

1. The definition of "Consent Decree" found in Section IV, DEFINITIONS, is hereby deleted, and replaced by the following definition: "'Consent Decree" or "Decree" shall

mean the original Consent Decree (entered June 12, 1995), as modified by any Court-approved amendments or modifications, and all appendices attached to the original Consent Decree as modified by any Court-approved amendments or modifications.”

2. The definition of "Record of Decision" found in Section IV, DEFINITIONS, is hereby deleted and replaced with the following definition: “"Record of Decision" or "ROD" shall mean (a) the EPA Record of Decision relating to the Site signed on September 22, 1993, by the Regional Administrator, EPA Region VI, including all attachments thereto, and (b) the ROD Amendment signed on September 20, 1999 by the Regional Administrator, EPA Region VI, including all attachments thereto.”

3. The definition of “Remedial Design” in Section IV, DEFINITIONS, is hereby deleted and replaced with the following definition: “"Remedial Design" shall mean those activities that the Supplemented Settling Defendants have completed, as of September 20, 1999, to design the response action to address the release of hazardous substances at the Site.”

4. The definition of “Remedial Action” in Section IV, DEFINITIONS, is hereby deleted and replaced with the following definition: “"Remedial Action" shall mean those activities that Supplemented Settling Defendants have completed, as of September 20, 1999, to implement the response action to address the release of hazardous substances at the Site.”

5. Section IV, DEFINITIONS, is hereby amended to add the following definition: “Supplemented Settling Defendants” shall mean those Parties identified in Appendix D (Settling Defendants) and CBS Operations Inc.”

6. The definition of "Statement of Work" in Section IV, DEFINITIONS, is hereby deleted and replaced with the following definition: "'Statement of Work" or "SOW" shall mean the Statement of Work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to the Consent Decree, including any Court-approved modifications thereto."

7. Paragraphs 11 and 12 of Section VI, PERFORMANCE OF WORK BY SETTLING DEFENDANTS, regarding the remedial design and remedial action at the Site are hereby deleted and replaced by the following text:

"11. Work to Be Performed. Supplemented Settling Defendants shall perform the Work described in this Consent Decree and in the SOW (Appendix B), including any Court-approved modifications thereto.

12. Health and Safety Plan. Supplemented Settling Defendants shall implement the Health and Safety Plan that Settling Defendants submitted to EPA on or about August 27, 1997."

8. Paragraph 45 of Section XIV, ASSURANCE OF ABILITY TO COMPLETE WORK, is hereby amended by deleting the specified amount of "\$6,500,000" and replacing it with the amount of "\$230,000". The following sentence is added at the end thereof:

"Supplemented Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Supplemented Settling Defendants may change the form

of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.”

9. Paragraph 47 of Section XV, CERTIFICATION OF COMPLETION, is hereby deleted and replaced by the following text:

“47. Certification of Completion of the Remedial Action. Notwithstanding any other provision of this Consent Decree, EPA has concluded, after a reasonable opportunity for review and comment by the State, that as of September 20, 1999, the Remedial Action has been fully performed in accordance with the ROD and ROD Amendment and that the Performance Standards have been achieved. The Certification of Completion of the Remedial Action contained in this paragraph shall not affect Supplemented Settling Defendants’ remaining obligations under this Consent Decree.”

“a. [intentionally left blank]

“b. [intentionally left blank]”

10. Paragraph 83 of Section XXIII, COVENANTS NOT TO SUE BY PLAINTIFFS, is hereby deleted and replaced by the following text:

“83. [intentionally left blank]”

11. Paragraph 86 of Section XXIII, COVENANTS NOT TO SUE BY PLAINTIFFS, is hereby deleted and replaced by the following text:

“United States’ Post-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent

Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Supplemented Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to the Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.”

12. Paragraph 104 of Section XXVIII, NOTICES AND SUBMISSIONS, is hereby modified to add the following individuals under the heading “As to the Supplemented Settling Defendants”:

As to the Supplemented Settling Defendants:

Jeffrey B. Groy
V.P. & Senior Counsel/Environmental
CBS Operations Inc.
299 South Main Street, Suite 1800
Salt Lake City, UT 84111

13. Appendix B, Section IV, WORK TO BE PERFORMED, Subsections A and B are hereby deleted and replaced with the following:

“A. [intentionally left blank]

“B. [intentionally left blank]”

14. Appendix B, Section IV, WORK TO BE PERFORMED, Subsection C, Operation and Maintenance, is hereby deleted and replaced with the following:

“C. OPERATION AND MAINTENANCE. “Supplemented Settling Defendants shall perform all operation and maintenance (O&M) activities as described in the document entitled Cleveland Mill Site Operation and Maintenance Plan (February 24, 2000). Supplemented Settling Defendants shall perform all the ground water sampling and analysis as described in the Removal Action Sampling and Analysis Plan (August 27, 1997) as revised by EPA’s April 4, 2001, letter to Mining Remedial Recovery Company, and as revised by EPA’s January 3, 2003 letter to Geochemical Solutions. In addition, Supplemented Settling Defendants shall perform all O&M activities described in the above-named plans and approved by EPA pursuant to SOW Section IV and SOW Section I Paragraph B.”

15. The abovementioned four documents – the Cleveland Mill Site Operation and Maintenance Plan (February 24, 2000); the Removal Action Sampling and Analysis Plan (August 27, 1997); EPA’s April 4, 2001, letter to Mining Remedial Recovery Company; and EPA’s January 3, 2003, letter to Geochemical Solutions – comprise the new Appendix E to the Consent Decree.

16. Appendix B, Section V, COMPLETION, Subsection A. through Subsection B, is hereby deleted and replaced with the following:

“A. [intentionally left blank]”

“B. [intentionally left blank]”

17. All provisions of the Consent Decree unaffected by these modifications shall operate in conjunction with these new provisions in the same manner and to the same extent as did the substituted language in the original Consent Decree.

18. Except specifically provided in this Joint Stipulation, the Parties intend that all other terms and conditions of the Consent Decree will remain unchanged and in full effect.

THE UNDERSIGNED PARTY enters into this Joint Stipulation to Modify Consent Decree, in the Matter of United States and New Mexico Office of the Natural Resources Trustee v. Bayard Mining Corp. Mining Remedial Recovery Company, and Viacom International, Inc. (now known as TCI Pacific Communications, Inc.) and CBS Operations Inc., originally known as Viacom International Services Inc. (Joined Party), relating to the Cleveland Mill Superfund Site:

FOR THE UNITED STATES OF AMERICA:

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division

NICOLE VEILLEUX
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
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GREG J. FOURATT
United States Attorney for District of New Mexico

JAN ELIZABETH MITCHELL
Assistant United States Attorney
PO BOX 607
Albuquerque, NM 87103
(505) 346-7274

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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Samuel Coleman, Director
Superfund Division
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202

James E. Costello
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202

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FOR THE STATE OF NEW MEXICO:

**OFFICE OF THE NATURAL RESOURCES
TRUSTEE:**

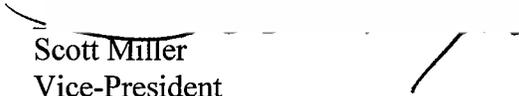
Jim Baca
New Mexico Natural Resources Trustee
610 Gold Avenue, S.W., Suite 236
Albuquerque, NM 87102

**GARY K. KING
NEW MEXICO ATTORNEY GENERAL**

Judith Ann Moore
Assistant Attorney General
P.O. Box 1508
Santa Fe, NM 87504-1508
(505) 827-7481

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FOR BAYARD MINING CORP.:



Scott Miller
Vice-President
Bayard Mining Corp.
4780 Caterpillar Road Unit C
Redding, CA 96003

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FOR MINING REMEDIAL RECOVERY COMPANY:

Norman S. Johnson
Vice-President
Mining Remedial Recovery Company
4780 Caterpillar Road Unit C
Redding, CA 96003

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FOR TCI PACIFIC COMMUNICATIONS, INC. (FORMERLY KNOWN AS VIACOM INTERNATIONAL INC.):

Senior Vice President Law and Regulatory
Affairs, Deputy General Counsel

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FOR CBS OPERATIONS INC.:

Eric J. Sobczak
Assistant Secretary
CBS Operations Inc.
11 Stanwix Street
Room 336
Pittsburgh, PA 15222

THE UNDERSIGNED PARTIES, Bayard Mining Corp., Mining Remedial Recovery Company, TCI Communications, Inc. and CBS Operations Inc., enter into this Joint Stipulation to Modify Consent Decree, in the Matter of United States and New Mexico Office of the Natural Resources Trustee v. Bayard Mining Corp, Mining Remedial Recovery Company, and TCI Pacific Communications, Inc. (formerly known as Viacom International Inc.), relating to the Cleveland Mill Superfund Site:

**FOR DEFENDANTS, BAYARD MINING CORP.,
MINING REMEDIAL RECOVERY COMPANY,
TCI PACIFIC COMMUNICATIONS, INC., and
CBS OPERATIONS INC.:**

Lynn H. Slade
Attorney for Defendants

Jeffrey B. Groy
Attorney for CBS Operations Inc.